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Attorneys for Defendants and Counterclaim Plaintiffs

Marc Jacobs International, LLC,

Saks Incorporated, d/b/a Saks Fifth Avenue, and

Neiman Marcus Group Limited, LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NIRVANA, L.L.C.,

Plaintiff,

v.

MARC JACOBS INTERNATIONAL

L.L.C., et al.,

Defendants.

MARC JACOBS INTERNATIONAL

L.L.C., et al.,

Counterclaim Plaintiffs,

v.

NIRVANA, L.L.C.,

Counterclaim Defendant.

Case No.: 2:18-cv-10743-JAK-SK

**APPLICATION FOR LEAVE TO
FILE MOTION TO STAY**

Honorable John A. Kronstadt

Hearing Date: June 7, 2021

Hearing Time: 8:30 a.m.

Courtroom: 10B

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 Please take notice that on June 7, 2021 at 8:30 a.m., in the courtroom of the
 3 Honorable John A. Kronstadt, located at 350 W 1st Street, Los Angeles, CA 90012,
 4 Courtroom 10B, Defendants and Counterclaim Plaintiffs Marc Jacobs International,
 5 LLC and Saks Incorporated, d/b/a Saks Fifth Avenue (“Saks”) (together,
 6 “Defendants” unless otherwise specifically designated)¹ will and hereby apply for
 7 leave to file a motion to stay (the “Proposed Motion”) after the deadline to file all
 8 motions (the “Application”).

9 The deadline to file all motions expired on November 2, 2020. ECF 102. On
 10 November 11, 2020, Plaintiff and Counterclaim Defendant Nirvana LLC
 11 (“Plaintiff” or “Nirvana”) filed *Nirvana LLC v. Robert Fisher*, 2:20-cv-10324 (the
 12 “Fisher Case”), in this Court for declaratory judgment that Plaintiff owns the ‘166
 13 Registration and that Proposed Plaintiff-In-Intervention Mr. Robert Fisher (“Fisher”
 14 or “Plaintiff-In-Intervention”) does not own a valid copyright in the Disputed
 15 Smiley, among other relief. Plaintiff filed a notice of related case in the Fisher Case
 16 stating, “[b]oth this case and the related case call for a determination of the same or
 17 substantially identical questions of law and fact relating to copyright ownership of
 18 that work registered for copyright as the ‘Happy Face’ t-shirt design, Registration
 19 No. VA0000564166, that is presently at issue in *Nirvana L.L.C. v. Mark Jacobs*
 20 *International L.L.C.; Saks Incorporated, d/b/a Saks Fifth Avenue; Neiman Marcus*
 21

22 ¹ On May 7, 2020, Neiman Marcus Group LTD LLC (“NMG”) and its debtor
 23 affiliates filed petitions for chapter 11 bankruptcy, which initiated the bankruptcy
 24 cases captioned In re Neiman Marcus Group LTD LLC, et al., Case No. 20-32519
 25 (DRJ) (Bankr. S.D. Tex.) Nirvana LLC was scheduled on the Reorganized Debtors’
 26 Schedules as a contingent and unliquidated claim. Nirvana LLC did not file a proof
 27 of claim. Article I.A.32 of the bankruptcy plan states that “[a]ny claim that has been
 28 . . . listed in the Schedules as contingent, unliquidated, or disputed, and for which
 no proof of claim is or has been timely filed . . . shall be expunged without further
 action by the Debtors and without further notice to any party or action, approval, or
 order.” Thus, Nirvana LLC’s claims against NMG were expunged as of Sept. 25,
 2020, and Nirvana LLC is barred from asserting its claim against those entities.

1 *Group Limited, L.L.C., et al.*, U.S.D.C., Central District of California Case No.
2 2:18-cv-10743-JAK-SK, and therefore, are likely to entail substantial duplication of
3 labor for the judges assigned each respective case.” Fisher Case, ECF 5.

4 As explained in the Proposed Motion, Defendants will likely be prejudiced if
5 this Action moves closer to trial prior to resolution of the Fisher Case. The need for
6 this stay of proceedings arose after the deadline to file all motions had passed, the
7 failure to file prior to the deadline was by no fault of Defendants, and the request is
8 made in good faith. Leave to file the Proposed Motion is essential for Defendants’
9 motion to be properly considered by the Court and to preserve Defendants’ rights.
10 For the reasons stated above and because it will serve the interests of justice for
11 Defendants’ motion to be presented to the Court with its supporting papers, good
12 cause exists for leave to file the motion to stay.

13 This Application for leave to file the Proposed Motion is based upon this
14 Application, and the concurrently filed Declaration of Michael J. Zinna (“Zinna
15 Decl.”), Notice of Proposed Motion and Proposed Motion to Stay, Proposed Order
16 granting this Application, Proposed Order granting Motion to Stay, and upon such
17 other and further matters as may be presented at any hearing on this motion. This
18 Application is made pursuant to Local Rule 7-3. Counsel met and conferred on
19 February 5, 2021. Plaintiff informed Defendants it opposes the Application. Zinna
20 Decl. ¶ 4.

21 In light of the forgoing, Defendants respectfully request that their present
22 Application for leave to file the Proposed Motion to stay past the motion deadline
23 be granted.

1 DATED: February 17, 2021

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5 By /s/ Michael J. Zinna
Michael J. Zinna

6
7 *Attorneys for Defendants and Counterclaim*
8 *Plaintiffs Marc Jacobs International, LLC; Saks*
9 *Incorporated, d/b/a Saks Fifth Avenue; and*
10 *Neiman Marcus Group Limited, LLC*

11 **CERTIFICATE OF SERVICE**

12 I hereby certify that on February 17, 2021, a true and correct copy of the
13 foregoing APPLICATION FOR LEAVE TO FILE MOTION TO STAY was filed
14 electronically with the Clerk of the above-captioned Court utilizing the Court's
15 CM/ECF system, resulting in an automatic transmission of a Notice of Electronic
16 Filing to all counsel of record in the above-referenced proceeding.

17 By /s/ Michael J. Zinna

18 Michael J. Zinna
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